

ESSENTIAL SERVICES COMMISSION

WRONGFUL DISCONNECTION DECISION UNDER SECTION 48A OF THE GAS INDUSTRY ACT 2001

MR JASON S & AGL SALES

DECISION AND REASONS

Key Issue

Mr S established a gas account with AGL on 12 October 2007. AGL disconnected Mr S's gas supply on 8 November 2012, due to non-payment of his account.

EWOV has assessed that AGL issued all notices in accordance with the Energy Retail Code (ERC) clause 13.1 and demonstrated compliance with clause 13.2(a)(ii) by using best endeavours to contact the customer. However, EWOV considers that AGL does not appear to have assessed S's capacity to pay; offered a second instalment plan; and provided details on the URGS, concessions, energy efficiency advice and the availability of an independent financial counsellor, as required by clauses 11.2(1), 11.2(3) and 11.2(4).

AGL does not believe it should pay wrongful disconnection compensation to S because he was not exhibiting signs of hardship before disconnection and therefore AGL is not required to comply with clauses 13.2 and 11.2 of the Energy Retail Code (ERC).

Background

Date	Event
12 October 2007	AGL established a gas account for S at the supply address.
25 June 2010	SP AusNet took an actual meter read which was the first actual meter read in 27 months. AGL issued a gas bill for \$1,466.21.
4 August 2010	S contacted AGL and requested an extension until 25/8/12 for the total amount of \$1,466.21.
27 September 2010	S contacted AGL and agreed to pay \$500 and the remainder of the account before 11/10/10.
9 November 2010	S contacted AGL and advised that he had been unemployed for 6 months. S agreed to pay gas account in instalments i.e. \$500 on 19/11/10 and \$350 fortnightly instalments on the total balance of \$1897.
24 December 2010, 8 June 2011 and 16 August 2011	S paid three instalments of \$213, \$300 and \$300 on his gas account.
27 September 2011	S contacted AGL and queried the correctness of the total amount owing. AGL advised S that he had an outstanding balance of \$9591.53 for electricity and gas combined
26 September 2011	Electricity disconnected

Date	Event
29 September 2011	S contacted AGL and requested reconnection of electricity S offered to pay \$658 per month towards the outstanding gas account of \$1976.15.
30 September 2011	S paid \$315.56 towards gas account.
27 January 2012	Registered letter sent to S. <i>Subsequent note indicates this letter outlined available assistance, including payment plan options, and the customer did not respond</i>
7 March 2012	AGL contacted S and agreed upon an instalment plan of \$200 per fortnight for gas and \$400 per fortnight for electricity. On same day AGL cancelled the instalment plan and advised S that outstanding balance for gas and electricity combined, (\$8581.63) was to be paid in order to reconnect electricity which had been cancelled on 01/03/12. S informed AGL that he could not pay until June 2012.
8 March 2012	EWOV investigated a complaint raised by S.
3 April 2012	EWOV closed the complaint as there was no further contact from S. EWOV sent a letter to S offering two different instalment plans: <ul style="list-style-type: none"> • \$404 per fortnight; or • \$100 per fortnight for consumption only, with a referral to AGL's hardship program.
27 April 2012	AGL issued S with a gas bill for \$2,246.98 with a due date of 16/05/12.
21 May 2012	S made a payment of \$150 towards the gas account.
5 June 2012	AGL disconnected gas supply due to non-payment of account. The outstanding balance was \$2,096.98.
6 June 2012	S contacted AGL and advised he could not commit to making a payment towards his account.
8 June 2012	AGL contacted S and attempted to negotiate an instalment plan but S was informed that payment of all arrears was required before gas supply would be reconnected. AGL advised S that he had been provided with ample time to contact AGL prior to the disconnection.
8 June 2012	EWOV raised an assisted referral in relation to the gas disconnection. EWOV included referral to AGL's hardship program as part of the resolution it sought for S.
12 June 2012	AGL was unsuccessful in its attempts to contact S and sent him a registered letter. The letter asked him to contact AGL in order to establish an instalment plan and assess his eligibility for the hardship program.
13 August 2012	AGL issued a reminder notice for \$573.03 with a due date of 20/08/12.
21 August 2012	AGL issued a disconnection warning notice for \$573.03 with a due date of 28/08/12.

Date	Event
29 August 2012	S contacted AGL and advised that he had been in contact with EWOV regarding his bill. (EWOV had no record of contact with S recorded on systems).
1 October 2012	AGL sent a registered letter to S warning him about disconnection to his gas supply.
15 October 2012 at 11:11 am	Gas to the property was disconnected.
8 November 2012 at 10:25 am	Gas to the property was reconnected.

Decision Having regard to the advice and information provided by the Energy and Water Ombudsman (Victoria) (EWOV) and AGL, the Essential Services Commission (the Commission) finds that:

1. The gas disconnection was wrongful as AGL failed to comply with the terms and conditions of its contract with S in that AGL failed to comply with clauses 11.2(1), 11.2(3) and 11.2(4) of the Energy Retail Code (ERC) which is incorporated into that contract by the ERC; and
2. The wrongful disconnection compensation is payable for the period 15 October 2012 to 8 November 2012.
3. AGL is required to pay S a total of \$3,500 wrongful disconnection compensation under section 48A of the Gas Industry Act 2001.

Reasons

The reasons for the Commission's decision are as follows:

1. AGL confirmed that it disconnected S's gas supply on 15 October 2012 and reconnected on 8 November 2012.
2. There were sufficient signs to indicate that S was experiencing payment difficulties and lacked sufficient income to pay. It was found that AGL used best endeavours to contact S, consistent with AGL having concluded that S lacked the income to pay.
3. Clause 11.2 of the ERC states that, if the customer contacts the retailer for assistance to pay or if the retailer believes this is necessary, the retailer must provide the specified assessment and assistance as required. It appears that the conditions were met and AGL was obliged to comply with clause 11.2.
4. AGL records indicate that they had sufficient information regarding S's financial situation by 6 June 2012 but failed to offer him the appropriate information assistance. Therefore it appears that AGL has not complied with ERC clause 11.2(4).
5. Based on the information provided, AGL has failed to demonstrate that it assessed S's capacity to pay prior to the disconnection of the gas supply. Therefore it appears that AGL has not complied with ERC clause 11.2(1).
6. AGL records indicate that from 29 September 2011 until 3 April 2012, three ostensible instalment plans were offered to S. AGL did not provide any documentation demonstrating how the payment plans were calculated to reflect S's capacity to pay.
7. AGL records show that an offer made on 7 March 2012 was withdrawn on the same day and the offer therefore does not meet AGL's obligations under clause 11.2(3). On 8 June 2012 AGL refused S an instalment plan and on 12 June 2012 AGL appears to have written to S but has not shown that it offered an instalment plan in that letter.

8. Clause 11.2(3) requires the retailer to offer a customer a second instalment plan unless the customer has, in the previous 12 months, failed to comply with two instalment plans and does not provide a reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan. Based on the information provided, AGL has failed to offer S a second instalment plan that reflected S's capacity to pay, prior to the disconnection of the gas supply and therefore AGL has not complied with ERC clause 11.2(3).
9. AGL is required to pay S wrongful disconnection compensation capped at \$3,500 in accordance with section 48A(1A) of the Gas Industry Act 2001 (gas was disconnected for 23 days, 23 hours, 14 minutes).

Dr. Ron Ben-David
Chairperson

Date: 2013